

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

October 18, 2007

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, October 18, 2007, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: M.S. Mitchell, Chair; Elizabeth Bishop; David Dennis; Michael Gisick; Bud Hentzen; Hoyt Hillman; Bill Johnson; Ronald Marnell; John W. McKay Jr.; Debra Miller Stevens; Don Sherman and G. Nelson Van Fleet. Don Anderson and Darrell Downing were absent. Staff members present were: Donna Goltry, Principal Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Neil Strahl, Senior Planner; Derrick Slocum, Associate Planner; Scott Knebel, Principal Planner and Maryann Crockett, Recording Secretary.

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1. Approval of the October 4, 2007 MAPC minutes.

MOTION: To approve the October 4, 2007 minutes subject to staff recommendation.

MCKAY moved, **HILLMAN** seconded the motion, and it carried (12-0).

- ❖ **Items # 2-1 and 2-2 may be taken in one motion unless there are questions or comments.**

Consideration of Subdivision Committee recommendations from the meeting of October 11, 2007.

- 2-1. **SUB 2007-85: One-Step Final Plat -- LINWOOD ACRES 2ND ADDITION,** located east of Greenwich Road and north of Kellogg.

NOTE: This is a replat of Lot 1, Linwood Acres Addition.

STAFF COMMENTS:

- A. Water services are available to serve the site. The applicant shall guarantee the extension of sanitary sewer to serve Lots 1-4.
- B. City Engineering has approved the applicant's drainage plan.
- C. On the final plat tracing, the MAPC signature block needs to reference "M.S. Mitchell, Chair"
- D. "Lots, and a Block" shall be referenced in the plat's text.
- E. County Surveying advises that the plat needs a benchmark datum.
- F. A measured right of way is needed on Zelta.
- G. The lots should be denoted with bold lines.
- H. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat

will be subject to submittal of this binder and any relevant conditions found by such a review.

- I. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendation.

DENNIS moved, **JOHNSON** seconded the motion, and it carried (12-0).

- 2-2. SUB 2007-86: One-Step Final Plat -- SPEER ADDITION,** located on the north side of 45th Street north and east of Hillside.

NOTE: This is a replat of the Ryding Addition in addition to unplatted land. This site is located in the County adjoining Wichita's city limits and annexation is required. Lot 2 has been approved for a

zone change (ZON 2006-53) from SF-20, Single-Family Residential to RR, Rural Residential. A Conditional Use (CON 2006-54) has also been approved for the site for General Animal Care.

STAFF COMMENTS:

- A. Prior to this plat being forwarded to the City Council, the applicant shall apply for annexation to Wichita.
- B. Since sanitary sewer is not available to serve this property, the applicant shall contact Environmental Services Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval of a new lagoon from KDHE and Environmental Services.
- C. City of Wichita Water Utilities Department advises that water services are available along 45th St. North and fees-in-lieu of assessment are needed. A petition for future extension of sanitary sewer services is needed and shall include sanitary sewer main in lieu of assessment fees.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. City Engineering has approved the drainage plan. An off-site drainage agreement may be needed. County Engineering requests a copy of the final drainage plan.
- F. In the platlor's text "Equine Addition" needs to be changed to "Speer Addition".
- G. A restrictive covenant shall be provided that ties Lots 1 and 2 together.
- H. Perimeter easements around Lot 2 are recommended.
- I. The plat should meet the service drive code, per Sedgwick County Fire Department.
- J. In accordance with the approved site plan for the Conditional Use, the plat proposes access control except one opening along the 45th St. North frontage. Traffic Engineering requests the opening be defined. The final plat tracing shall reference the dedication of access controls in the platlor's text.
- K. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- L. The City Council certification needs to be added.
- M. In the title block "City of Wichita" needs to be added.
- N. GIS has requested abbreviations for the street types and directionals.
- O. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- P. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- Q. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- T. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- X. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendation.

DENNIS moved, **JOHNSON** seconded the motion, and it carried (12-0).

❖ **PUBLIC HEARINGS**

ADVERTISED TO BE HEARD NO EARLIER THAN 1:30 P.M.

3. **Case No.: ZON2007-46** - M & J Corporation (Bob Suellentrop) / Poe & Associates, Inc., (Tim Austin) Request City zone change from "NR" Neighborhood Residential to "LC" Limited Commercial on property described as;

Lot 1, Block 1, Chadsworth Plaza, an Addition to Wichita, Sedgwick County, Kansas. Generally located Midway between 21st and 29th Streets North, on the northwest corner of Maize Road and Maize Court.

BACKGROUND: The applicant is seeking “LC,” Limited Commercial zoning. The application area is located north of Maize Road Court, east of Maize Road, is platted as Lot 1, Block 1, Chadsworth Plaza Addition, and contains 1.01 acres. In 2001, the application area was rezoned from “SF-5,” Single-family Residential to “NR,” Neighborhood Retail, subject to Protective Overlay 111 (ZON2001-47). Protective Overlay 111 required construction of a masonry-screening wall along the south line of the application area, was subject to platting within one year, the property was to be developed according to the submitted site plan, and the “SF-5” zoned residential property to the east of the application area was to be a part of the same plat as the application area.

The property has been developed with a strip commercial building divided into six storefronts that face west. The building’s parking is located just west of the structure, adjacent to Maize Road. The application area has platting complete access control across its 182.44 feet of Maize Road frontage. Access to the site is by way of Maize Road Court.

A median in Maize Road Court contains a 20-foot, 5-inch tall, 96 square-foot ground sign. BZA2005-33 permits a second 96 square-foot ground sign, located in the northwest corner of the site, for a total of 192 square feet of ground signage.

The “NR” zoning district permits one multi-tenant ground sign up to 96 square feet in size. Additional ground signs are permitted provided there is 150 feet of spacing between ground signs, and the total amount of signage does not exceed .5 square feet of area times the frontage. Ground signs must also be located at least 15 feet from adjacent property. Ground signs are limited to a maximum height of 22 feet. “NR” district signage is limited to indirect or internal illumination of white light only. Flashing or moving images are prohibited; portable signs are prohibited, except for institutional uses. Building signs cannot exceed 32 feet in area; 30 feet in height, and are limited to one per building elevation for each major use provided the building elevation on which the building sign is to be attached has at least one of the following circumstances: street frontage, adjacent to a non-residential zoning district or if adjacent to a residential zoning district there must be parking or open space with a depth of 150 feet or more measured from the face of the sign to the property line which adjoins the residential district. Building signs facing residential zoning are limited to direct or internal illumination of white light only. Flashing or moving images are prohibited. Off-site signs are prohibited.

In general, the “LC” district permits one ground or pole sign per zoning lot except that two signs are permitted on an interior lot with at least 180 feet of frontage. Properties with less than 330 feet of arterial street frontage are permitted 1 square-foot of ground signage per lineal-foot of street frontage up to a maximum area of 300 square feet. The height of a ground sign is not to exceed 20 feet except when the number of permitted signs exceeds one, then five feet of additional height can be added for every sign that is not installed, up to 25 feet. Building signs are permitted on any building elevation that has street frontage, or is adjacent to non-residential zoning, or if adjacent to residential use or zoning there must be 150 feet of parking or open space between the sign and the non-residential use or zoning. Building signs are limited to 20 percent of each tenant space up to 400 square feet in area with no more than a total of three signs per elevation. Off-site and portable signs are permitted subject to conditions. (The “LC” district does not prohibit flashing or moving images or off-site signs.)

Adjoining property is zoned “GO,” General Office / offices (east), “SF-5,” Single-family Residential / single-family residences (south), “LC,” Limited Commercial / retail strip center (west) and “SF-5,” Single-family Residential approved for “LC,” Limited Commercial, subject to a community unit plan / single-family residence (north). There is a landscaped buffer running along the south side of Maize Court, adjacent to the residences located south of the application area.

The “NR” district permits “retail, general” but limits individual commercial uses to 8,000 square feet or less and does not permit outdoor storage or display for commercial uses. Restaurants in the “NR” district are limited to a maximum of 2,000 square feet, and are not permitted to provide drive-up window or in-

vehicle food service. The “LC” district does not have these development standards. The “NR” district limits building height to 35 feet while the “LC” district permits 80 or higher with greater setbacks.

CASE HISTORY: The site was platted in 2002 (SUB2002-15). The site also received a variance to increase the area of a ground sign to 196 square feet ground sign (BZA2005-33).

ADJACENT ZONING AND LAND USE:

NORTH:	“SF-5,”	Single-family Residential, but approved for “LC,” Limited Commercial; single-family residence
SOUTH:	“SF-5,”	Single-family Residential; single-family residences
EAST:	“GO,”	General Office; office
WEST:	“LC,”	Limited Commercial; retail sales

PUBLIC SERVICES: Maize Road is an arterial with four through lanes, a left-turn lane and a continuous right-turn lane carrying in excess of 20,000 average daily trips. The site is currently served by sewer, water and other normal publicly supplied services.

CONFORMANCE TO PLANS/POLICIES: The *2030 Wichita Functional Land Use Guide* conforms to the application area’s current zoning by depicting the site as appropriate for “local commercial.” This land use category includes areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw.

RECOMMENDATION: Staff did not support the 2001 request for “NR” zoning. It was staff’s opinion then that the site’s location was not consistent adopted location guidelines for neighborhood retail uses given the fact that the property was not a transition from the lower intensity established Chadsworth single-family neighborhood to a more intense use since, at that time, Cadillac Lake was not zoned the way it is now, and there was adequate commercial zoning already in place west of Maize Road in New Market Square. Staff still has concerns about granting more intense zoning adjacent to Chadsworth given the issues that have arisen on the south side of Chadsworth. However, based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following Protective Overlay:

1. The following LC uses are prohibited: recycling collection station, public and private; construction sales and service; pawn shop; secondhand store; service station; vehicle repair, limited; wireless communication facility; asphalt or concrete plant, limited and outside storage. Off-site signage, billboards, flashing or moving signage, LED or video signage that can be seen from residentially zoned property is also prohibited. Also prohibited is building or identification signage that faces south.
2. Building heights are limited to 35 feet.
3. There shall not be any lighting or light fixtures directed to the south, and light fixtures shall be absolutely screened to the south to prevent light from spilling over on the residence to the south.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North Maize Road has been and is developing as a significant commercial corridor, especially between 21st Street and the City of Maize. Most nearby property is zoned or approved for commercial or office uses (LC or GO), but there is an established single-family subdivision, Chadsworth, zoned SF-5, located immediately south of the application area.
2. The suitability of the subject property for the uses to which it has been restricted: The site is already zoned “NR,” Neighborhood Retail, which permits general retail uses subject to a limited set of restrictions discussed above. The site is developed with a strip commercial building that

appears to be consistent with “NR” standards, therefore the site could continue to be operated as currently zoned.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval would introduce uses not currently permitted, and a reduction in development standards that are not currently permitted by the “NR” district. Some of the uses not permitted in the “NR” district but allowed in the “LC” district are: college or university, hospital, public recycling collection station, nurseries or garden center, farmers market in the city, convenience store, construction sales and service and drive-through restaurants. The “LC” district does not restrict the size of individual businesses to 8,000 square feet or less, and restaurants to 2,000 square feet or less, as the “NR” district does.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Presumably denial would be cause some form of economic loss to the applicant, otherwise the applicant would not spend the money to apply for this request. Denial would maintain the current development standards that the adjacent neighbors have experienced since this site was rezoned to “NR.”
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *2030 Wichita Functional Land Use Guide* depicts the application area’s current zoning by depicting the site as appropriate for “local commercial.” This land use category includes areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw.
6. Impact of the proposed development on community facilities: Community facilities are in place to serve the site, and approval of the request should not negatively impact public services.

JESS MCNEELY, Planning staff stated that the agent has requested a deferral on this item. He said DAB V would hear the case on November 5, 2007.

DENNIS commented that staff answered his question about DAB V input. He also asked about “LC” Limited Commercial zoning next to residential housing.

TIM AUSTIN, POE AND ASSOCIATES, AGENT FOR THE APPLICANT, referred to page 4 of the Staff Report, Item #1 concerning building signage on the south elevation. He said they were requesting a two-week deferral in order to visit with the property owners to the south because they do have a tenant who would like a 38 square foot sign on the south side. He mentioned that they are just shy of the permit’s 150-foot requirement.

MOTION: To approve the request for a two week deferral.

MCKAY moved, **BISHOP** seconded the motion, and it carried (12-0).

4. **Case No.: CUP2007-42** – KBT Investments, LLC (owner); Anchor Sign, Inc., c/o Dulcie Livingston (agent) Request DP-53 Amendment #6 to increase signage on wall signs on the east and north elevations of Parcel 3A on property described as;

Lot 1, Don & Marvin Addition, Sedgwick County, Kansas. Generally located on the northwest corner of Webb Road and Boston.

BACKGROUND: The applicant, KBT Investments LLC, proposes to add two (2) 56 square foot wall-signs, on the front (east) and side (north) elevations of a strip center, at the corner of East Boston Street

and South Webb Road on Parcel 3A of DP-53 Quail Meadows Community Unit Plan. The property is zoned "LC" Limited Commercial. Currently, Parcel 3A contains one (1) strip store, with space for four (4) tenants. This parcel has a pole sign facing north and south along Webb Road, with spaces on the sign for each tenant that occupies the strip center. The signs in question for this application have already been installed on the building. One sign faces east towards Webb Road and the other sign faces north towards a multi-family development, zoned TF-3, Two-family Residential. Both signs are 56 square feet (15'3" x 3'7½") and are lighted.

The Wichita Sign Code allows illuminated building signs, provided that any building elevation on which such sign is placed shall be required to have or comply with any one of the following:

- A) Street Frontage;
- B) Be adjacent to an "NO" Neighborhood Office, "GO" General Office, "NR" Neighborhood Retail, "LC" Limited Commercial, "GC" General Commercial, "CBD" Central Business District, "OW" Office Warehouse, "IP" Industrial Park, "LI" Limited Industrial or "GI" General Industrial zoning district; or
- C) If adjacent to a residential use or zoning district, there must be a parking, loading or open space area with a depth of one hundred fifty feet or more as measured from the sign face to the property line which adjoins the residential zoning district or use. (Wichita Sign Code 24.04.195.2).

For DP-53, the sign provision states that advertising signs shall be permitted along Harry and Webb Road not to exceed 30 feet in height or to be placed as to project over any street right-of-way. No billboard advertisement or roof signs will be allowed. Any increase could only be granted either by an action of the governing body, relying on the permissive language of the Unified Zoning Code that allows the CUP approval/amendment process to set specific requirements related to signage and other site development elements, or by a variance.

The intersection of Webb Road and Boston Street has "LC" Limited Commercial zoning on the southwest corner of the intersection and is developed with a supermarket. The southeast corner of the intersection is zoned LC and developed with a small commercial strip center. Condos, zoned "GO" General Office, are located across Webb Road from the subject site, the northeast corner of the intersection of Webb and Boston. Just north of the subject site, less than one hundred fifty feet from the north elevation of the strip store in question, is a multi-family development zoned "TF-3" Two-family Residential.

CASE HISTORY: The property is platted as Don & Marvin Addition, recorded January 2, 1996. DP-53 Quail Meadows Community Unit Plan was approved originally in 1973. There have been a number of administrative adjustments approved and denied since this CUP was created. There have also been four (4) amendments granted and one (1) amendment denied since 1995. Amendment #1, approved in 1995, permits additional commercial uses for Parcel 3. Amendment #2, denied in 1998, was to permit a drive-thru restaurant and an increase in signage. Amendment #3, approved in 1999, reduced the CUP setback and compatibility setback along the north property line from 35 feet to 10 feet. Amendment #4, also approved in 1999, was for an addition of a service station without vehicle repair as a permitted use in Parcel 1, and to adjust the location of the nursery and garden center to Parcel 2. And, amendment #5, approved in 2003, removed the restrictions on drive-thru's, reduced the northern building setback line, amended the architectural control and revised access control on Webb road.

ADJACENT ZONING AND LAND USE:

NORTH:	TF-3	Residential (Apartments)
SOUTH:	LC	Commercial (Supermarket)
EAST:	GO	Residential (Condos)
WEST:	GO	Institutional (Daycare Center)

PUBLIC SERVICES: The proposed amendment pertains only to signage regulations and has no impact on public services.

CONFORMANCE TO PLANS/POLICIES: The Comprehensive Plan Land Use-Commercial/Office Objective/Strategy III.B.2 seeks to integrate the development of out parcels to planned retail centers through combined signage. The requested sign for the east elevation does follow this guideline, because the four businesses located in the strip center are allowed wall signs on their respective elevations for advertisement, also there is a pole sign for the strip center that allows each tenant sign space to attract the vehicles traveling north and south along Webb Road. The wall sign on the east elevation complies with all the conditions for wall signs, set forth in the City of Wichita Sign Ordinance (Section 20.04.195.2). According to this section of the sign code, the sign needs to comply with one of the following:

(East Elevation Sign)

1. Street Frontage
 - (Yes) The sign faces Webb Road.
2. Adjacent to either NO, GO, NR, LC, GC, CBD, OW, IP, LI or GI zoning districts.
 - (Yes) Across Webb Road is GO Zoning.
3. If adjacent to residential use or zone, there must be parking, loading or open space area with a depth of one hundred fifty feet or more as measured from the sign face to the property line which adjoins the residential use or zone.
 - (Yes) The sign is adjacent to residential uses across Webb Road, but there is a parking/loading area and a principal arterial road that separates the sign from the residential uses sign face, and the distance is greater than one hundred fifty feet.

However, the other sign, located on the north elevation, does not follow this guideline, nor does it follow the conditions set forth for wall signs set forth in the City of Wichita Sign Ordinance (Section 24.04.195.2).

(North Elevation Sign)

1. Street Frontage
 - (No) The sign does not have street frontage. The sign faces a parking/loading area and a multi-family development.
2. Adjacent to either NO, GO, NR, LC, GC, CBD, OW, IP, LI or GI zoning districts.
 - (No) The sign is adjacent to a TF-3 zone district.
3. If adjacent to residential use or zone, there must be parking, loading or open space area with a depth of one hundred fifty feet or more as measured from the sign face to the property line which adjoins the residential use or zone.
 - (No) The sign face is less than one hundred fifty feet from the residential zoning to the north.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED to allow one 56 square-foot wall sign on the east elevation facing Webb Road, but staff recommends DENIAL of the wall sign on the north elevation facing the multi-family residential development (TF-3 Two-family Residential zoning.)

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The intersection of Webb Road and Boston Street has “LC” Limited Commercial zoning on the southwest corner of the intersection and is developed with a supermarket. The southeast corner of the intersection is zoned LC and developed with a small commercial strip center. Condos, zoned “GO” General Office, are located across Webb Road from the subject site, the northeast corner of the intersection of Webb and Boston. Just north of

the subject site, less than one hundred fifty feet from the north elevation of the strip store in question, is a multi-family development zoned "TF-3" Two-family Residential.

2. The suitability of the subject property for the uses to which it has been restricted: The property is suited for uses to which it has been restricted.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The placement of the wall sign on the east elevation, facing Webb Road, as requested will add to the amount of signage competing for motorists attention at the intersection of Webb and Boston, but otherwise will not detrimentally affect nearby properties. But, the placement of a wall sign on the north elevation, facing the multi-family residential development, does not comply with any of the three (3) conditions as stated in Section 24.04.195.2 in the City of Wichita Sign Ordinance.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan Land Use-Commercial/Office Objective/Strategy III.B.2 seeks to integrate the development of out parcels to planned retail centers through combined signage. The requested sign for the east elevation does follow this guideline, because the four businesses located in the strip center are allowed wall signs on their respective elevations for advertisement, also there is a pole sign for the strip center that allows each tenant sign space to attract the vehicles traveling north and south along Webb Road. The wall sign on the east elevation complies with all the conditions for wall signs, set forth in the City of Wichita Sign Ordinance (Section 20.04.195.2). According to this section of the sign code, the sign needs to comply with one of the following:

(East Elevation Sign)

1. Street Frontage
 - (Yes) The sign faces Webb Road.
2. Adjacent to either NO, GO, NR, LC, GC, CBD, OW, IP, LI or GI zoning districts.
 - (Yes) Across Webb Road is GO Zoning.
3. If adjacent to residential use or zone, there must be parking, loading or open space area with a depth of one hundred fifty feet or more as measured from the sign face to the property line which adjoins the residential use or zone.
 - (Yes) The sign is adjacent to residential uses across Webb Road, but there is a parking/loading area and a principal arterial road that separates the sign from the residential uses, and the distance is greater than one hundred fifty feet.

However, the other sign, located on the north elevation, does not follow this guideline, nor does it follow the conditions set forth for wall signs set forth in the City of Wichita Sign Ordinance (Section 24.04.195.2).

(North Elevation Sign)

1. Street Frontage
 - (No) The sign does not have street frontage. The sign faces a parking/loading area and a multi-family development.
2. Adjacent to either NO, GO, NR, LC, GC, CBD, OW, IP, LI or GI zoning districts.
 - (No) The sign is adjacent to a TF-3 zone district.
3. If adjacent to residential use or zone, there must be parking, loading or open space area with a depth of one hundred fifty feet or more as measured from the sign face to the property line which adjoins the residential use or zone.
 - (No) The sign face is less than one hundred fifty feet from the residential zoning to the north.

DERRICK SLOCUM, Planning staff presented the staff report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **SHERMAN** seconded the motion, and it carried (12-0).

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5. **Case No.: CUP2007-49/ZON2007-47** – 31st South Rock Investments, LLC, c/o Rob Ramseyer (owner); Baughman Company, PA, c/o Phil Meyer (agent) Request DP-300 Rocky Ford Commercial CUP Amendment #1 to redesign the CUP with a new street along the northern boundary and add property along the southern boundary and County zone change from "SF-20" Single-family Residential to "LC" Limited Commercial (rezoning tract was previously approved for "IP" Industrial Park zoning by ZON2007-19, subject to platting, but platting and zone change has not been completed).

The East 770.00 feet of the South Half of the Northwest Quarter of Section 8, Township 28 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, all being subject to Road Rights-of-Way of record. Generally located East of Rock Road between 1/4 an 1/2 mile south of 31st Street South.

BACKGROUND: The applicant proposes to rezone 2.8 acres from "SF-20" Single-family Residential to "LC" Limited Commercial and to add this 2.8 acres to DP-300 Rocky Ford Community Unit Plan. The rezoning tract abuts the southern and eastern edge of the CUP and is located one-half mile south of 31st Street South and east of Rock Road. It was approved previously (ZON2007-19) for "IP" Industrial Park zoning but the plat has not been recorded to effectuate this zone change.

Amendment #1 to DP-300 would include the addition of land along the southern and eastern edge of the CUP. A public street would run through the CUP near the northern edge as the main access to a proposed industrial park to the east. A reserve would be platted between this street and the northern boundary of the CUP. Other changes to the CUP would be shifting parcel boundaries to accommodate the additional property and the new street and reserve. Ground signage is modified by allowing the 250 square feet of signage to be split into two signs, with one being located in Reserve "A".

New parcel sizes would be: Parcel 1 – 1.43 acres (62,501 square feet), Parcel 2 1.43 acres (62,500 square feet), Parcels 3 and 4 - 1.15 acres (50,000 square feet), Parcel 5 - 1.14 acres (49,533 square feet), Parcel 6 – 13.04 acres (568,176 square feet) and Reserve "A" - 1.03 acres (44,715 square feet). Maximum building coverage remains at 30 percent and maximum gross floor area at 35 percent for Parcels 1-6.

The property is located close to McConnell Air Force Base and would be located within the AT/FP-O Anti-Terrorism/Force Protection Overlay District designed to regulate the height of structures. The property also is within the area designated as appropriate for "IP-A" Industrial Park-Airport District.

The CUP prohibits uses considered incompatible with McConnell Air Force Base such as residential uses and institutional and commercial uses with high concentrations of people. Also, the CUP restricts heights to 25 feet or two-story, whichever is less.

The site currently is in agricultural use. The property to the north, east and south is zoned SF-20 and is in agricultural use but the property to the north is approved for LC and the property to the east for IP zoning. McConnell Air Force Base is located west of Rock Road and is zoned SF-20.

CASE HISTORY: The property is unplatted. A plat (SUB2007-75) has been submitted.

ADJACENT ZONING AND LAND USE:

NORTH: SF-20 Agricultural

SOUTH:	SF-20	Agricultural/farmstead
EAST:	SF-20	Agricultural/undeveloped
WEST:	AFB	McConnell Air Force Base

PUBLIC SERVICES: The property is located on Rock Road, a principal arterial. Traffic counts for 2006 were 17,221 vehicles per day on Rock Road between 31st Street South and 39th Street South. The 2030 projection for Rock Road is 31,500. Other normal public services will be available and provided for during the platting process.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “employment/industry center.” It also showed it as “Potential Future Park Site.” The employment/industry center recommendation was based upon the 1994 Air Installation Compatible Use Zone (AICUZ) study for McConnell AFB and the property remains within the “Maximum Mission Area” identified by the Joint Land Use Study. The site is within the one-half mile wide anti-terrorism/force protection zone around McConnell. The use restrictions of the CUP eliminate most of the uses considered incompatible with McConnell Air Force Base.

RECOMMENDATION: Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

- A. APPROVE the zone change (ZON2007-47) to LC Limited Commercial subject to platting of the property within one year;
- B. APPROVE Amendment #1 to DP-300, subject to the following conditions:
 - 1. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 - 2. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
 - 3. All property included within this CUP and zone case shall be platted within one year after approval of this CUP amendment by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
 - 4. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-300) includes special conditions for development on this property.
 - 5. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The property is located east of McConnell Air Force Base. The site is currently zoned SF-20 and is in agricultural use. The property to the north, east and south is zoned SF-20 and also is in agricultural use with scattered farmsteads, but the property to the north and east is approved for commercial and industrial park use.
- 2. The suitability of the subject property for the uses to which it has been restricted: The area is less suitable for the use as currently zoned (suburban residential) since it is within the “Maximum Mission Area” of McConnell Air Force Base and within the one-half mile buffer zone of the base.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The conditions of the CUP are designed to minimize conflicts between the commercial development and McConnell Air Force Base by limiting heights and eliminating uses the base finds to be an anti-terrorism and force protection risk.
4. Length of time the subject property has remained vacant as zoned: The property is in agricultural use. Water and sewer service has not been extended to the site so that it not ready for urban-type use yet.
5. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: According to a recent article "McConnell Air Force Base puts nearly \$370 million into Wichita's economy, according to Air Force Data. The base itself is worth nearly \$1.4 billion." ("Defending Kansas Bases: McConnell, others hope to avoid closing list," The Wichita Eagle, January 17, 2005, p. 1). The proposed development plan and recommended conditions are designed to lessen concerns of the base.
6. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "employment/industry center." It also showed it as "Potential Future Park Site." The employment/industry center recommendation was based upon the 1994 Air Installation Compatible Use Zone (AICUZ) study for McConnell AFB and the property remains within the "Maximum Mission Area" identified by the Joint Land Use Study. The site is within the one-half mile wide anti-terrorism/force protection zone around McConnell. The use restrictions of the CUP eliminate most of the uses considered incompatible with McConnell Air Force Base.
7. Impact of the proposed development on community facilities: The requested amendment and zone change should not result in any significant change in traffic or need for community services beyond those already generated by previous zone change and community unit plan approvals.

DONNA GOLTRY, Planning staff presented the staff report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, SHERMAN seconded the motion, and it carried (12-0).

6. **Case No.: CON2007-34** - Westar Energy (owner/applicant) PEC, c/o Rob Hartman (agent) Requests a County Conditional Use for a communication tower in "RR" Rural Residential zoning on property described as;

A 10-acre tract of land in the Northeast Quarter of Section 22, Township 29 South, Range 2 East of the 6th P.M. Sedgwick County, Kansas, more particularly described as follows:

Beginning at a point approximately 660 feet South of the Northeast Corner of the said Northeast Quarter, said point being on the East right of way line of 127th Street; thence South 660 feet along the east right of way line to a point; thence West 660 feet to a point; thence North 660 feet to a point; thence East 660 feet to the point of beginning. Generally located South of 95th Street South and west of 127th Street East.

BACKGROUND: The applicant, Westar Energy, is seeking a Conditional Use to permit the construction of a 300-foot high, galvanized steel lattice, guy supported tower. The 10-acre subject tract is zoned "RR"

Rural Residential and is located less than a ¼ mile south of 95th Street South on the west side of 127th Street East. Wireless Communication Facilities over 65-feet in height in the “RR” Rural Residential zoning district may be permitted with a Conditional Use. The subject property is located within the City of Mulvane’s zoning area of influence. The Mulvane Planning Commission will consider this request at their October 11, 2007 meeting.

The applicant indicates (see attached letter) that the proposed facility (a Private Land Mobile Radio system) is needed to both provide and extend both internal voice and mobile data communications for company operations, including storm restoration situations, for a section of Sedgwick County that includes Mulvane and Derby. The applicant indicates three existing towers or structures in the immediate area are not tall enough to meet their communication needs. The nearest Westar towers with a height of approximately 300-feet are located in east Sedgwick County, in Cowley County in the Atlanta area and the other in Harvey County in the Newton area.

The area around the site is mostly active agricultural fields or grasslands broken up by drainage and groups or hedges of trees. The nearest residences are located approximately ¼-mile northeast of the site (built 1980, 1973), approximately ½-mile northwest of the site (1986, 1980, 1977, 1971) and approximately ¾-mile south/southwest (1955) of the site. There appears to be approximately 30 single-family residences within a mile of the site, with most of them located in a cluster, northwest of the site along Greenwich Road, north of 95th Street North, approximately a mile from the site. There are two active railroad lines that merge around 95th located approximately ¾-mile northwest of the site. All the surrounding properties are zoned “RR” Rural Residential.

The tower is proposed to be located in the middle of the 10-acre site, surrounded by an 80-foot (x) 80-foot fenced/gated area, as shown on the attached “Site Plan.” Also located within the fenced in area is a 500-gallon propane tank and generator, which provides 4-5 days of emergency/back up power, and a 12-foot (x) 16-foot prefabricated concrete equipment building with aggregate stone finish. A 20-foot wide gravel drive surrounds the fenced area, with access to the site via a 12-foot wide gravel drive to 127th Street East.

The 10-acre site (660-feet {x} 660-feet) provides enough area between the equipment compound and the abutting “RR” zoned properties around it that the screening requirement is not active: Unified Zoning Code (UZO) Art. IV, Sec. IV-B.3.b.1. Art. IV Sec. IV-C.5.b. of the UZO requires a 300-foot setback for the tower from the abutting properties, and again the 10-acre site exceeds that standard.

The proposed tower and associated communication frequencies and wattages must meet standards determined by the Federal Aviation Administration (FAA) to pose no hazard to air navigation. The applicant has attached an analysis of airspace in the area, noting that Cook Airfield is located approximately 3.199-nautical miles from the site. The analysis also notes that the private landing facility, the Olson Aerodrome is located just over a ½-mile from the site. For aircraft warning the FAA conditions require dual lighting of the tower consisting of red lights at night and medium intensity flashing white lights during the day, which is what the applicant proposes. Section Art. III Sec. III-D.6.g.(5) of the UZO prohibits strobe lighting. Art V Sec. V-D.6. of the UZO allows the Board of County Commissioners to modify Supplementary Use Regulations (such as the strobe lighting prohibition) upon receiving a favorable recommendation from the MAPC. If the flashing lights proposed by the applicant are determined to be strobe lighting, Planning staff recommends that the Board of County Commissioners modify the lighting requirement to comply with the FAA mandate of either painting or lighting the tower for aircraft warning. The applicant has proposed the flashing lighting to avoid painting the tower red and white and thus avoid continued maintenance of the paint. The proposed galvanized surface of the tower will blend into the sky more readily than a red or white paint, which meets the intent of the “Design Guidelines” of the “Wireless Communication Master Plan.” The proposed tower will allow co-location for other wireless providers at 180-feet and 170-feet, with each location allowing six (6) antennas; this tower will not have a triangular “top hat” antenna array.

CASE HISTORY: The “RR” zoned subject property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	“RR”	Agriculture, farmstead
SOUTH:	“RR”	Agriculture
EAST:	“RR”	Agriculture
WEST:	“RR”	Agriculture

PUBLIC SERVICES: No municipally supplied public services are required. The applicant will extend electrical and phone service to the site. The site has access to 127th Street East, an unpaved Rockford township road. 95th Street South, located less than ¼-mile north of the site is a paved two-lane county highway. The 2030 Transportation Plan shows no change to the current status of 127th & 95th.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) painting towers red and white instead of using strobe lighting. Since the time the Wireless Communication Master Plan was adopted, the FAA changed their regulations to require daytime strobe lighting; whereas, when the plan was adopted, the FAA allowed painted towers red and white instead of using strobe lighting.

The site is outside the Cities of Mulvane’s, Derby’s and Wichita’s 2030 growth areas and is classified as a “rural area.” The 2030 Functional Land Use Guide, defines “rural functional land use” as land being outside of all Sedgwick County’s cities’ 2030 growth areas and meant to accommodate agricultural uses, rural uses no more offensive than those agricultural uses found in Sedgwick County and predominately larger lot residential subdivisions (2-acres or more in size) with provisions for individual or community water and sewer services.

RECOMMENDATION: Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the following conditions:

- A. All requirements of Art. III Sec. III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a “guyed lattice” design that generally conforms to the approved site elevation and that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The support structure shall be 300 feet in height and shall be designed and constructed to accommodate communication equipment for at least six wireless service providers, with no triangular “top hat” antenna array.
- E. The tower shall be lighted only with a dual lighting system consisting of red lights at night and medium intensity white flashing lights during the day that conforms to FAA regulations. The applicant shall submit a current copy of FAA approval to the MAPD and the Code Enforcement Office prior to the issuance of a building permit.

- F. The 10-acre site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- G. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- H. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is rural. The properties surrounding the subject property in all directions are zoned "RR" Rural Residential and are used for agriculture, farmsteads, or large tract single-family residences. Wireless communication facilities of this size are typically located in rural areas, where they will effect the fewest number of people and can be consistent with the zoning, uses, and character of the rural areas of Sedgwick County.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential and is currently used for agriculture. The site is apparently suitable for continued agricultural use. A Conditional Use may be granted to permit a wireless communication facility in the "RR" Rural Residential zoning district; however, the facility should conform to the guidelines of the Wireless Communication Plan as much as possible. The proposed facility conforms to most of the plan's guidelines.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects on the "RR" zoned properties and agricultural activities in the area should be minimized to a degree by the Conditional Use standards of the Unified Zoning Code, which should limit noise, lighting, and other activity from adversely impacting these properties. The site's 10-acres size should also mitigate some of the negative impact of the tower on the surrounding area.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility appears to conform to the Location Guidelines of the Wireless Communication Master Plan since there are no other towers or tall structures in the vicinity of the site which can accommodate the communication needs of the applicant. The proposed wireless communication facility conforms to the Design Guidelines of the Wireless Communication Master Plan by minimizing the height, mass, proportion, and silhouette of the facility through its guyed lattice design; by utilizing an unobtrusive color with a matte finish to minimize glare; and by being placed in an area where existing vegetation obscures some of the facility from view. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. The site's 660-foot (x) 660-foot, 10-acre site exceeds that standard times two.
5. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed tower does not detrimentally impact the operation of airports in the vicinity.

BILL LONGNECKER, Planning staff presented the staff report.

LONGNECKER reported that the Mulvane Planning Commission considered the case a week before, and had denied the request by a 5-3 vote. He referred Planning Commission members to handouts, which included minutes of the Mulvane Planning Commission, and information provided by the applicant's agent (packet), and other correspondence relative to the case.

LONGNECKER briefly reviewed information provided by the applicant's agent as a hand out, including an aerial map showing the tower location and its proximity to the surrounding communities that Westar serves, information on Westar's wholesale transmission customers, and a map with the location of the Olson Aerodome (private airstrip).

Responding to a question from **MCKAY** concerning the waterway located west of the site and asked if it was a floodway and if it could be built on, **LONGNECKER** said it appeared to be in an area that had a 2% chance of flooding, and that it could be built on, but that it would require engineering to ensure proper drainage. **MACKAY** noted that this could provide another buffer for properties west of the site.

ROBERT HARTMAN, PEC ENGINEERS, INC., ON BEHALF OF APPLICANT WESTAR ENERGY, said Westar has done their homework on this request. He said they have checked the surrounding area and there are no other towers that field people can use to communicate in case of a weather catastrophe or other emergency. He said they checked several different locations, and felt that this site was the most centrally located with proximity to Derby and Rose Hill. He said they researched the possibility of using other towers, and contacted the FAA to insure that the proposed tower complies with all requirements. He said they also took into consideration optimum service with minimal impact on the surrounding community. He commented that no one wants a communication tower in their back yard; however, he said with the low population in the area, there should be little impact. He added that a 300-foot tower cannot be screened. He said they also contacted neighbors in the notification area and explained what they were proposing. He said at that time several people were not opposed to the tower; however, since the hearing in Mulvane, opposition has arisen. He said representatives from Westar were present including Doug Young, Field Communications Manager, and Matt Armfield from Real Estate Services. He concluded by stating that they were in agreement with staff comments.

Responding to a question from **HILLMAN** concerning requests to move the tower north and south, **HARTMAN** explained that there were 2-3 sites in the area under the same ownership. He said this site was the location the landowner requested. He said they weren't really sure what the neighbors wanted.

BISHOP clarified that the tower would accommodate six other wireless service providers, which was one of the review criteria used by staff, and commented that co-locations would require fewer towers.

HARTMAN responded that Westar would provide space for other services on their tower.

DAVE YEAROUT, RUGGLES & BOHM, REPRESENTING WICHITA TOWERS LLC, said they are aware of two other towers that are available for use in this area. He said one was a 450-foot tower north of 71st Street and the Kansas Turnpike in Hayesville, and the other was located in Butler County near Rose Hill in the vicinity of 190th Street and 87th Street. He said Westar did not contact Wichita Towers regarding a new structure or to check if space was available on any existing towers. He said the intent of the Wireless Master Plan was to establish regulations and standards and combine users onto one tower.

Responding to **HILLMAN's** question concerning the 500-megahertz frequency and range, **YEAROUT** commented that he didn't know that much about radio frequencies, but he understood that as far as locational issues are concerned, adjustments and "tweakings" can be done from any location to boost, enhance and direct signals.

LILLY S. TURNER, 603 RUSSELL, MULVANE commented that she owned two sites across the road north from the proposed tower site. She said it was her dream to build a house facing southeast but that she didn't want the view from her front window to be a tower, a propane tank or a building.

TROY TURNER, 13511 E. 95th STREET SOUTH, MULVANE said he has a house and ten barns, and that his grandfather bought the property back in 1934. He said he disapproves of the tower and location, and added that Boyd and Minnie Humbolt have multiple locations in the area and that this could have

been put on any of their properties. He said this tower does not serve Mulvane, and asked why Westar doesn't put the tower in a different area. He added that the City of Mulvane is also opposed to the tower. He mentioned that Rose Hill has a 260-foot tower that they would be willing to raise to 300-feet just for this purpose. He said Rose Hill welcomes this, but Mulvane disagrees with it. In addition, he said the two pilots who attended the meeting of the Mulvane Planning Commission disagreed as to whether location of the tower at this site was safe or not. He said one pilot agreed on the location, the other pilot opposed the location. He concluded by passing out a map, which depicted all the Humbolt and Turner property in the area.

HERBERT PHILLIPS, 478 SE 40th ROAD, GREAT BEND said he owned ground to the northeast of the site, which he felt was an ideal location for a housing development. He said he feels that this tower would reduce property values in the area, and the type of homes that could be built, and that was the reason he was opposed to the proposal. He added that neither he nor his brother was ever contacted by Westar.

RICHARD SANBORN, 134 EAST 95TH STREET, MULVANE said he owned property northeast of the proposed location. He said 20-30 years ago Westar had an opportunity to provide electricity for the area but declined. He said representatives of Westar were telling the Commission things that had no basis in fact. He said there were other towers available, and that the only person that agreed with the proposal was Humbolt. He also mentioned using satellite communication. He concluded by saying that the tower proposal was invasive, oppressive and property value degrading. He said Westar had knowledge of other tower owners but made no attempt to contact them. He said the tower was unnecessary, and requested that Commission deny the application.

TAPE 1, SIDE 2

LLOYD HUMBOLT said he was 81 years old and that he owned three farms around the proposed tower location, so if the tower were going to devalue anyone's property it would be his. He briefly commented on how Westar approached him concerning location of the tower, how he had discussed it with one of his neighbors/relatives (Troy Turner), and added that when certain people came to the Mulvane Planning Commission Meeting, they had changed their minds about the tower being located where it was proposed. He said he couldn't think how this tower was going to lower the value of their real estate, but that if it lowers the value too much, he would just buy some more land. He mentioned that he had three sons farming full time, and that he has always worked with people and the community. He said they want to do our part of being neighbors, and added that neighbors work together and help each other. He concluded by saying that it sounds like some people have changed their minds about the proposal. He said he didn't know of anyone that has ever gotten killed by a tower, but that he would leave it up to the Planning Commission to make a decision on this issue.

TOM HUMBOLT, 13500 EAST 111th STREET, MULVANE said he farms the area, and that they will run cattle in the pasture where the tower is to be located. He said Mr. Reynolds from Westar told them the tower would actually use only 1 acre of the 10-acre site.

DOUG YOUNG, FIELD COMMUNICATION, WESTAR, 8181 SOUTH KANSAS AVENUE, TOPEKA said the reason they didn't approach any of the other tower owners was because they did their own analysis using software to project the kind of coverage that they would need. He said there wasn't a single tower in the area that would accomplish what this tower would do. He also mentioned tower construction and foundation limitations, and said extending a 240/260-foot tower to 300 feet may not be an option due to design limitations and engineering. He said he was not saying that this was not an option, but they haven't done an analysis on extending the tower 60-foot and if that was possible.

MOTION: To give Mr. Young five more minutes for his presentation.

MCKAY moved, **SHERMAN** seconded the motion, and it carried (12-0).

YOUNG continued by stating that they are talking about internal use voice grade circuits, and that satellite communication is not an option because you have to be immobile; therefore employees could not transmit while they were traveling, and you also have to be pointed towards the satellite. He added that mobile voice communication also wouldn't work in the area. He said there is some fairly expensive equipment that is available, but they didn't think that was a fair alternative. He said the reason they selected a tower radio system was because they were being frugal. He said due to the growth in Derby there is a need for improved communications. He said their study supported building one tower not only for operations but also for the safety of their people in the field to promote good communications to operators at the dispatch center.

Responding to a question from **HILLMAN** concerning the actual design of the 260-foot tower, **YOUNG** commented that he hadn't actually seen the engineering drawings.

HILLMAN asked if Westar would be agreeable to a 3-4 week delay on the proposal to investigate possible relocation of this tower.

YOUNG responded they would agree to that.

MOTION: To postpone until Westar has had a chance to re-evaluate what is available in the area and come back with additional information.

HILLMAN moved, **BISHOP** seconded the motion.
(No vote taken, discussion continued.)

DIRECTOR SCHLEGEL asked whether the deferral was indefinite or until Westar requests a time certain?

HILLMAN said to let Westar determine the time.

BISHOP said she would like to add an amendment to the motion to see if staff had the ability to do a consultant study?

DIRECTOR SCHLEGEL responded that the department was not set up do that type of study without a budget, which they did not have.

There was discussion concerning the possibility of approving the case, and that the research be completed prior to the case being presented to the County Commission.

SUBSTITUTE MOTION: To approve the application subject to staff recommendation with the understanding that between now and when the item is presented to the County Commission, Westar will investigate the possibility of using the tower at Rose Hill.

JOHNSON moved, **SHERMAN** seconded the motion, and it carried (9-3). **BISHOP, HILLMAN, MILLER STEVENS** – No.

BISHOP said she could not support the substitute motion because the Wireless Communication Master Plan has elements in the policy that encourages co-location and, she thinks they should push co-location at every opportunity.

HENTZEN clarified that the substitute motion included approval of staff's recommendation of approval.

MARNELL commented that he was going to support the substitute motion because he felt that if a public service company was going to respond properly, they needed to have these kinds of facilities. He added that the existing tower has to fit into the specifications that Westar needs for their communication system.

Responding to a question from **DENNIS** concerning another opportunity for a public hearing, **DIRECTOR SCHLEGEL** explained that technically this MAPC meeting was the public hearing for this item; however, he added that in the meetings of the County Commission, the Commission typically allowed additional public comment on zoning issues.

7. **Case No.: CON2007-35** – Jeffrey Miller, owner Request County Conditional Use for an accessory apartment in "RR" Rural Residential zoning on property described as;

A tract of land located in the Northeast Quarter of Section 4, Township 25 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, described as follows:
Beginning at a point 1957.95 feet due North (assumed) and 991.77 feet West of the Southeast Corner of said Northeast Quarter; thence due South for 665 feet; thence South 53 degrees 08 minutes 20 seconds West for 120 feet; thence North 50 degrees 38 minutes 27 seconds West for 519.10 feet; thence North 41 degrees 25 minutes 50 seconds East for 501.28 feet; thence along a curve to the right for 86.87 feet with a central angle of 49 degrees 46 minutes 35 seconds and a radius of 100 feet; thence South 88 degrees 47 minutes 35 seconds East for 88.61 feet to the point of beginning. Generally located Southwest of the intersection of North Hydraulic and East 125th St. North (1325 E. Glocker.)

BACKGROUND: The applicant seeks a Conditional Use to permit an “accessory apartment” at 1325 E. Glocker Road, an unplatted lot containing 5 acres. The site is developed with a residence served by lagoon and well water. The applicant proposes to install an accessory apartment that will be tied into the same water and septic system as the primary structure. The accessory structure is to be located behind the principal structure, which is approximately 2,000 square feet in size, and complies with applicable setbacks. See the attached site plan for more details.

The application area is located north of the city, in the county, less than 1,000 feet south of the Sedgwick County / Harvey County line. The site is surrounded by large lot residential/agricultural uses. All adjoining property is zoned “RR” Rural Residential.

CASE HISTORY: The site’s current zoning was probably granted in 1985 with the adoption of countywide zoning.

ADJACENT ZONING AND LAND USE:

NORTH: “RR” Rural Residential; residential structure/agriculture
SOUTH: “RR” Rural Residential; residential structure/agriculture
EAST: “RR” Rural Residential; residential structure/agriculture
WEST: “RR” Rural Residential; residential structure/agriculture

PUBLIC SERVICES: The property is located on East Glocker Road, a two-lane residential road, off of North Hydraulic Road, a section line road with 80 feet of right of way. The property utilizes an existing lagoon for sewage and an existing well for water.

CONFORMANCE TO PLANS/POLICIES: The *Wichita-Sedgwick County Unified Zoning Code* Section III-D.6.a states that accessory apartments are required to be under the same ownership as the primary residence, compatible in appearance with the primary residence, and utilize the same water and sewer service as the primary residence.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The applicants shall obtain all applicable permits including, but not limited to: building, health and zoning.
2. Development and maintenance of the site shall be in conformance with the approved site plan and Unified Zoning Code Standards.
3. If operations have not begun within one year of approval, or if the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All property surrounding the application area is zoned RR and intended or developed for single-family residential use. The area is rural in character with large-lot residential uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR, which primarily permits agriculture and large lot residential uses. The site could continue to be used without the Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Provided that the proposed accessory apartment meets all applicable codes, the proposed accessory use should have no affect on the surrounding properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested conditional use is in conformance with *Wichita-Sedgwick County Comprehensive Plan* goals of efficiently using land and providing affordable housing options, and the *Wichita-Sedgwick County Unified Zoning Code* Supplementary Use Regulations
5. Impact of the proposed development on community facilities: Approval will not impact community facilities to any significant degree.

DERRICK SLOCUM, Planning staff presented the staff report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **SHERMAN** seconded the motion, and it carried (12-0).

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8. **Case No.: CON2007-37** – Robert & Annell Harmon Request City Conditional Use for day care general in "SF-5" Single-family Residential zoning on property described as;

Lots 58 and 59 and the South half of Lot 60, Block 11, East Highlands Addition, Sedgwick County, Kansas. Generally located Midway between Central and Murdock Avenues, west of Edgemoor Avenue, and south of Pine Street on the east side of Ridgewood Drive.

BACKGROUND: The applicants are requesting a Conditional Use to operate a day care, general out what appears to be their 1,006-square foot single-family residence. The property is zoned "SF-5" Single-family Residential. Day care, general (Unified Zoning Code, UZC, Art II, Sec II-B, 4(b)) allows for the

care of more than 10 individuals at one time and can be considered as a Conditional in the “SF-5” zoning district. The applicants currently operate a day care, limited (UZC, Art II, Sec II-B, 4(c)) at their residence, which is permitted as a home occupation in the “SF-5” zoning district, when it complies with the UZC’s Supplementary Use Regulations, Art III, Sec III-D, 6(i). Day care, limited allows for the care of no more than 10 individuals at one time. The applicants would like to be able to care for more than 10 children at any one, thus the request for day care, limited and the Conditional Use. The applicant has provided a site plan.

Standard #2 of Art III, Sec III, 6(i) of the UZC, states that when day care centers limited and general are located within the residence of the care provider they shall comply with the general home occupation standards of Art IV, Sec IV-E, 3. For this case, a few of the more significant of these home occupation standards are ;(b) ‘The home occupation shall occupy no more than 50% of the gross floor area contained within the dwelling unit.’, and (h) ‘The home occupation shall be conducted entirely within the principle dwelling unit or in a permitted accessory structure.’ Art IV, Sec IV-E, 4, district standards in the “SF-10” and “SF-5” zoning districts, states that its standards (a)-(d) shall prevail over the standards in Art IV, Sec IV-E, 3, if there is conflict between the two. Art IV, Sec IV-E, 4 (c) states that the home occupation shall be only conducted entirely within the main dwelling unit and not within any accessory structure, including detached and attached garages. This limits the applicants’ day care general request to approximately 503-square feet of their residence. Staff needs verification of this square footage and a breakdown of the areas where the day care facilities will be conducted, as this could be a point of contention with the Office of Central Inspection (OCI). Parking for day care limited is 1 per employee/teacher, plus one per vehicle used in the center, plus 1 per 10 children based on an enrollment above 12. Art IV, Sec IV-E, 4 (a) states only the persons occupying the subject dwelling unit shall be engaged in the home occupation, thus only the two applicants can work at the day care center. This essentially limits their vehicles to what they own, with further constrains being the size and development of their property. A vehicle can be parked in the attached singlewide garage, leaving one space in the driveway, which appears to be 25-26-feet long before it becomes part of the street right-of-way (ROW). Parking requirements coupled with the size and development of the site limits the number of children at the day care center to 12.

The surrounding area is developed as single-family residences, with a sample (GIS) of those residences around the subject site showing most to have being built in the 1940s, the exception being a residence built in the 1960s. All the area is zoned “SF-5.”

CASE HISTORY: The subject property, Lots 58, 59 and the south half of 60, Block 11 is part of the East Highlands Addition, which was recorded with the Register of Deeds August 5, 1924.

ADJACENT ZONING AND LAND USE:

NORTH:	“SF-5”	Single-family residences
EAST:	“SF-5”	Single-family residences
SOUTH:	“SF-5”	Single-family residences
WEST:	“SF-5”	Single-family residences

PUBLIC SERVICES: The subject property has access to Ridgewood Street, a paved, curbed residential street. There is no traffic volume data available. The 2030 Transportation Plan shows no change to the status of Ridgewood. All services are available, including Public water and sewer, to serve the site.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Urban Residential.” The Urban Residential category includes all densities of residential development found within the urban municipality. The policies of the UZC allow consideration of day care general as a Conditional Use in the “SF-5” zoning district, with application of the standards of Art III, Sec III, 6(i), Art IV, Sec IV-E, 3 and Art IV, Sec IV-E, 4. Application of these standards on a site can limit the size of a day center in the “SF-5” zoning district or deny it.

RECOMMENDATION: Based on the information available prior to the public hearing, planning staff recommends that the application be APPROVED, subject to the following conditions:

1. All requirements of Art III, Sec III, 6(i), Art IV, Sec IV-E, 3 and Art IV, Sec IV-E, 4 of the Unified Zoning Code shall be met.
2. The maximum number of children allowed in the day care center at any one time shall not exceed 12.
3. The site shall be developed in general conformance with the approved site plan, including a break down of the area(s) within the single-family residence to be used by the day care. The drive way shall be designated/ used as the drop off/pick up area. All improvements shall be completed within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
4. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is a single-family residential neighborhood, zoned "SF-5". The proposed day care with the applied conditions of the Conditional Use allows for an additional two (2) children in the existing day care, limited which has operated as a home occupation on the site, and as such will not radically disturb the character and activity of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The application area is zoned "SF-5" Single-Family Residential and is currently a single-family residence with the occupants operating a day care, limited as a home occupation on the site. The UZC permits the operation of a day care, general within the single-family residence with the approval of a Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. Detrimental affects on residential properties in the area should be minimized by the conditions of the Conditional Use.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies this site as appropriate for "Urban Residential." The Urban Residential category includes all densities of residential development found within the urban municipality. The policies of the UZC allow consideration of day care general as a Conditional Use in the "SF-5" zoning district, with application of the standards of Art III, Sec III, 6(i), Art IV, Sec IV-E, 3 and Art IV, Sec IV-E, 4.
5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated.

BACKGROUND: The applicants are requesting a Conditional Use to operate a day care, general out what appears to be their 1,006-square foot single-family residence. The property is zoned “SF-5” Single-family Residential. Day care, general (Unified Zoning Code, UZC, Art II, Sec II-B, 4(b)) allows for the care of more than 10 individuals at one time and can be considered as a Conditional in the “SF-5” zoning district. The applicants currently operate a day care, limited (UZC, Art II, Sec II-B, 4(c)) at their residence, which is permitted as a home occupation in the “SF-5” zoning district, when it complies with the UZC’s Supplementary Use Regulations, Art III, Sec III-D, 6(i). Day care, limited allows for the care of no more than 10 individuals at one time. The applicants would like to be able to care for more than 10 children at any one, thus the request for day care, general and the Conditional Use. The applicant has provided a site plan.

Standard #2 of Art III, Sec III, 6(i) of the UZC, states that when day care centers limited and general are located within the residence of the care provider they shall comply with the general home occupation standards of Art IV, Sec IV-E, 3. For this case, a few of the more significant of these home occupation standards are ;(b) ‘The home occupation shall occupy no more than 50% of the gross floor area contained within the dwelling unit.’, and (h) ‘The home occupation shall be conducted entirely within the principle dwelling unit or in a permitted accessory structure.’ Art IV, Sec IV-E, 4, district standards in the “SF-10” and “SF-5” zoning districts, states that its standards (a)-(d) shall prevail over the standards in Art IV, Sec IV-E, 3, if there is conflict between the two. Art IV, Sec IV-E, 4 (c) states that the home occupation shall be only conducted entirely within the main dwelling unit and not within any accessory structure, including detached and attached garages. This limits the applicants’ day care general request to approximately 503-square feet of their residence. Staff needs verification of this square footage and a breakdown of the areas where the day care facilities will be conducted, as this could be a point of contention with the Office of Central Inspection (OCI). Parking for day care limited is 1 per employee/teacher, plus one per vehicle used in the center, plus 1 per 10 children based on an enrollment above 12. Art IV, Sec IV-E, 4 (a) states only the persons occupying the subject dwelling unit shall be engaged in the home occupation, thus only the two applicants can work at the day care center. This essentially limits their vehicles to what they own, with further constrains being the size and development of their property. A vehicle can be parked in the attached singlewide garage, leaving one space in the driveway, which appears to be 25-26-feet long before it becomes part of the street right-of-way (ROW). Parking requirements coupled with the size and development of the site limits the number of children at the day care center to 12.

The surrounding area is developed as single-family residences, with a sample (GIS) of those residences around the subject site showing most to have being built in the 1940s, the exception being a residence built in the 1960s. All the area is zoned “SF-5.”

CASE HISTORY: The subject property, Lots 58, 59 and the south half of 60, Block 11 is part of the East Highlands Addition, which was recorded with the Register of Deeds August 5, 1924.

ADJACENT ZONING AND LAND USE:

NORTH:	“SF-5”	Single-family residences
EAST:	“SF-5”	Single-family residences
SOUTH:	“SF-5”	Single-family residences
WEST:	“SF-5”	Single-family residences

PUBLIC SERVICES: The subject property has access to Ridgewood Street, a paved, curbed residential street. There is no traffic volume data available. The 2030 Transportation Plan shows no change to the status of Ridgewood. All services are available, including Public water and sewer, to serve the site.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Urban Residential.” The Urban Residential category includes all densities of residential development found within the urban municipality. The

policies of the UZC allow consideration of day care general as a Conditional Use in the “SF-5” zoning district, with application of the standards of Art III, Sec III, 6(i), Art IV, Sec IV-E, 3 and Art IV, Sec IV-E, 4. Application of these standards on a site can limit the size of a day center in the “SF-5” zoning district or deny it.

RECOMMENDATION: Based on the information available prior to the public hearing, planning staff recommends that the application be APPROVED, subject to the following conditions:

1. All requirements of Art III, Sec III, 6(i), Art IV, Sec IV-E, 3 and Art IV, Sec IV-E, 4 of the Unified Zoning Code shall be met.
2. The maximum number of children allowed in the day care center at any one time shall not exceed 12.
3. The site shall be developed in general conformance with the approved site plan, including a break down of the area(s) within the single-family residence to be used by the day care. The drive way shall be designated/ used as the drop off/pick up area. All improvements shall be completed within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
4. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is a single-family residential neighborhood, zoned “SF-5”. The proposed day care with the applied conditions of the Conditional Use allows for an additional two (2) children in the existing day care, limited which has operated as a home occupation on the site, and as such will not radically disturb the character and activity of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The application area is zoned “SF-5” Single-Family Residential and is currently a single-family residence with the occupants operating a day care, limited as a home occupation on the site. The UZC permits the operation of a day care, general within the single-family residence with the approval of a Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. Detrimental affects on residential properties in the area should be minimized by the conditions of the Conditional Use.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Urban Residential.” The Urban Residential category includes all densities of residential development found within the urban municipality. The policies of the UZC allow consideration of day care general as a Conditional Use in the “SF-5” zoning district, with application of the standards of Art III, Sec III, 6(i), Art IV, Sec IV-E, 3 and Art IV, Sec IV-E, 4.

5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated.

BILL LONGNECKER, Planning staff presented the staff report.

BISHOP asked how many children the application was asking for?

LONGNECKER referred to condition #2 on page 3, of the staff report which stated..."not to exceed 12," which was 2 more than what they were currently allowed. He again briefly reviewed the staff report in response to **BISHOP's** questioning how he arrived at that number; the review answered **BISHOP's** question.

BISHOP said she felt handicapped because the DAB doesn't meet until after the Commission has heard the case. She said she is concerned about that amount of traffic in a residential area, although there was only going to be an increase of two children on the site.

LONGNECKER noted that some of the DABs had one meeting a month and opportunities for review by the DABs prior to the MAPC was not always possible.

MOTION: To approve subject to staff recommendation.

JOHNSON moved, **MCKAY** seconded the motion, and it carried (12-0).

9. **Case No.: CON2007-38** – Derrick & Diane Ward Request City Conditional Use for an accessory apartment in "SF-5" Single-family Residential zoning on property described as;

Lot 16, Gilder's Gardens Addition, Sedgwick County, Kansas. Generally located West of 127th Street East, north of Douglas Avenue, on the east side of Jackson Heights Street.

BACKGROUND: The applicants are requesting a Conditional Use to allow an accessory apartment on Lot 16, Gilda's Gardens Addition, a 5-acre lot located at 200 N Jackson Heights Street. The applicants will live in their existing 16-foot (x) 76-foot manufactured home, while one of the couple's 77 & 79 year old parents will live in either a stick frame, modular or residential designed manufactured home. Because of the parents' age and medical conditions they require care. The subject site is zoned "SF-5" Single-family Residential. Because the proposed additional structure will contain a kitchen, bathroom and sleeping quarters, it is classified as a dwelling unit and thus requires a "Conditional Use" approval for an accessory apartment.

The site plan shows the applicants' residence, the proposed accessory apartment located in front of the existing residence, and a 30-foot (x) 50-foot pole barn. No size is given for the proposed accessory apartment. The applicants' manufactured home is registered with the Office of Central Inspection (OCI) as a legal nonconforming land use, a 'mobile home' on "SF-5" zoned property; a movable (not located on a permanent foundation) detached dwelling unit that was manufactured according to standards prior to 1976 or that does not conform to the Manufactured Home Construction and Safety Standards Act (HUD code), per Art II. Sec II-B, 8(k) of the Unified Zoning Code.

The immediate area is characterized by large lot/tract single-family residential development with "SF-5" zoning located on the north side of Douglas Avenue. The exceptions are five (5) "TF-3" Duplex-residential zoned (ZON2004-10) lots, abutting the south side of the subject site. The other exception is applicants' residence, which is one of three mobile homes in the larger area between 127th Street East to Jackson Heights Street, north of Douglas, which staff found when driving the area.

The lots/tracts and tracts in the area generally range from 0.25–acres to over 4-acres with the houses on them having been built (GIS sampling) anywhere from the 1920s to 1980, with the majority having been built during the 1940s and 1950s. Materials used on the houses vary from brick, to brick and wood or composite siding, to wood or composite siding, or vinyl siding. Some of the larger lots, with houses on them, also have outbuildings on them, allowing these property owner's to keep their horses on their properties. The area also features lots of mature trees, landscaping and some mixed tree hedges. South of Douglas Avenue there is undeveloped, woody "SF-20" zoning, in a small isolated part of Sedgwick County, and a large manufactured housing park. The subject site is on Jackson Heights Street, a two-lane asphalt residential street with open ditches.

The Unified Zoning Code's Conditional Use requirements for accessory apartments are as follows:

- (a) A maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling;
- (b) The appearance of an accessory apartment shall be compatible with the main dwelling and with the character of the neighborhood;
- (c) The accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling, including that it shall not be subdivided or sold as a condominium.
- (d) The water and sewer service provided to the accessory structure shall not be provided as separate service from the main dwelling.

CASE HISTORY: The subject site is Lot 16, Gilder's Gardens Addition and was recorded with the Register of Deeds December 29, 1923. The mobile home was located on the site in early 1995. The site/area was annexed into the City of Wichita 11-28-1997.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5"	Single-family residences
SOUTH:	"SF-5," "TF-3"	Single-family residences, duplexes
EAST:	"SF-5"	Single-family residences
WEST:	"SF-5"	Single-family residences

PUBLIC SERVICES: The site has access to Jackson Heights Street, a two-lane asphalt residential street with open ditches. Douglas Avenue at this location is a two-lane asphalt urban collector street with open ditches. Public water and sewer serve the site. All other services are available to serve the site.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies this site as appropriate for "Urban Residential." The Urban Residential category includes all densities of residential development found within the urban municipality. The policies of the Unified Zoning Code allow one accessory apartment to be associated with a principle dwelling as a Conditional Use if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling hook-up. The proposed accessory apartment will have meet the standards for a conforming single-family residence, which include the UZC's 'residential-design manufactured home' standards, which is an upgrade to the applicants' legal non-conforming mobile home. Because the accessory apartment will have to meet the City's standards for a permanent single-family residence it will in fact become the primary residence, while the legal non conforming mobile home becomes a temporary accessory apartment, where the care givers/applicants will continue to live.

RECOMMENDATION: Based upon information available prior to the public hearing, Staff recommends that the request be APPROVED subject to the following conditions being completed within a year:

1. The accessory apartment shall be subject to all requirements of Art III, Sec III-D.6.a of the Unified Zoning Code (UZC), for accessory apartments. The appearance of the accessory apartment shall be compatible with the single-family residences of the neighborhood, including the requirements of Art IV, Sec IV-D of the UZC, for residential designed manufactured homes.
2. A restrictive covenant will be recorded with the Register of Deeds that will state that the existing legal non conforming mobile home will be removed from the site within 90 days when care of the current applicants' parents is no longer required or ceases. This will in effect end the Conditional Use for an accessory apartment.
3. The site will be generally developed as shown on an approved site plan, obtaining and conforming to all applicable permits, including but not limited to building, health, and zoning, including connection to City water & sewer.
4. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area surrounding the subject site, north of Douglas Avenue, is characterized by large lot/tract single-family residential development, zoned "SF-5" Single-family Residential, with the noted exceptions of the five abutting (south side of site) "TF-3" zoned duplexes and the applicants' legal non conforming mobile home. Residences in the area have been built beginning in the 1920s through the present, with a majority of the immediate housing being built in the 1940s and 1950s. A few of the larger residential properties also have outbuildings on them, which allow their owners to keep horses on their property. This area features lots of mature trees, landscaping and some mixed tree hedges. The roads are generally paved asphalt with open ditches. Staff saw no vacant housing; this appears to be a vital residential neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-5" Single-Family Residential, which accommodates low to moderate-density single-family residential development and complementary land uses. The site is developed as legal non-conforming mobile home and could continue to be used as it is (with yearly registration with OCI) without a Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed accessory apartment will be an improvement over the existing legal non-conforming mobile home, which will be removed when the care of the applicants' parents is no longer required or ceases.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested accessory apartment is in conformance with the "The Wichita-Sedgwick County Comprehensive Plan," although the applicants' current residence is registered with OCI as a legal non-conforming use.
5. Impact of the proposed development on community facilities: None identified.

BILL LONGNECKER, Planning staff presented the staff report.

MCKAY asked if the property was affected by the floodway?

LONGNECKER responded “no”.

Responding to a question from **HENTZEN** concerning a time frame for construction of the primary residence, **LONGNECKER** said there was no stated time frame, and that he thought that might have been an oversight on his part.

MCKAY said he thought the application should be a conditional use for the mobile home with time limits rather than an accessory apartment, since the mobile home already exists and they are adding a residence to the property.

LONGNECKER referred to the staff report and commented that the “legal non-conforming home” (trailer) becomes the accessory apartment.

JOHNSON Out @ 2:57 p.m.

There was considerable discussion concerning how the application was presented. Staff agreed on wording to better show the intent of the recommendation for approval of an accessory apartment, which would make the legal non conforming manufactured home a temporary accessory apartment, when the permanent house was built on the site. The legal non-conforming manufactured home/temporary accessory apartment would be removed when care for the parents was no longer provided.

BISHOP referred to the staff report conditions and the “restrictive covenants” and mentioned that the Office of Central Inspection and/or the City doesn’t get involved in enforcing those issues because they are civil; however, they are mentioned in the conditions.

LONGNECKER explained that restrictive covenants could be public.

DIANE WARD, 200 NORTH JACKSON HEIGHTS, APPLICANT thanked the Commission for the opportunity to speak. She asked the Commission to please approve the conditional use for the accessory apartment. She explained that the residence would be for her parents who are becoming elderly, and that the time has come in their lives that they need her help.

JACK GILBERT, 7015 ROCKWOOD said he owns property about south of the duplexes. He referred to the staff report, page 2., item B. and asked who would determine what was considered “compatible” with the main dwelling. He also asked about Item D. concerning the water and sewer system being attached to the same one used by the house. He said he understood that anytime a dwelling is built, there has to be a separate attachment to the sewer system. He concluded by saying that he has been out there since 1977, and that he previously sold 4.6 acres and kept 1.5 acres to build on. He said this changes the complexion of the where he wanted to build. He mentioned the duplexes to the north, and commented that so far they look pretty good, but he didn’t know what was going to happen down the road.

LONGNECKER explained that the legal non-conforming mobile would become the accessory apartment at such time as the new residence is built. He said in reference to the common sewer and water connections were in place to ensure less opportunity for separate ownership of the two residences.

TAPE 2, SIDE 1

MOTION: To approve subject to staff recommendation and the existing property becoming the accessory apartment once the primary residence is built and that all restrictions go to the mobile home and new residence.

MCKAY moved, **HILLMAN** seconded the motion.

(No vote taken, discussion continued.)

There was brief discussion concerning the time limit of one year, and if that was sufficient time to complete the new residence.

MARNELL asked about the possibility of a lot split as opposed to an accessory apartment so that both sites were in legal “non-conforming” use.

LONGNECKER explained that a lot split was a scenario discussed with the applicant.

MARNELL asked the applicant and if she would be able to meet the one year time schedule?

WARD said she could as of today, but asked if something should come up, could she come back and request more time?

MARNELL SUBSTITUTE: To allow the applicant two (2) years.

MARNELL moved, **BISHOP** seconded the motion, and it carried (11-0).

BISHOP said she supports this as a creative, flexible way to deal with the situation. She said this will be improving the neighborhood at some point in the future, and the non-conforming use, the trailer, will eventually go away.

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- 10. Case No.: DR-2005-21** - Request City and County zone change from “RR” Rural Residential, “SF-20” Single Family, “SF-5” Single Family, “LC” Limited Commercial, “GC” General Commercial, and “LI” Limited Industrial to “IP-A” Industrial Park – Airport

Generally located South of McConnell Air Force Base between Clifton Avenue and Rock Road.

Background: In November 2006, the Sedgwick County Commission and Wichita City Council directed staff of the Wichita-Sedgwick County Metropolitan Area Planning Department to proceed with a number of zoning code text and zoning map amendments in order to implement the recommendations of the Implementation Coordination Committee for the *McConnell Air Force Base Joint Land Use Study, May 2005* (JLUS).

One of the initiated zoning map amendments is to rezone certain properties located south of McConnell Air Force Base between Clifton Avenue and Rock Road to the IP-A, Industrial Park – Airport zoning district. The area that the governing bodies directed to be rezoned is shown on an attached map entitled “Proposed IP-A, Industrial Park – Airport Rezoning Original Proposal.” A description of the IP-A, Industrial Park – Airport zoning district also is attached.

The purpose of the proposed rezoning is to encourage future land uses on agricultural and undeveloped properties that are more consistent with Federal Land Use Compatibility Guidelines (LUCG), which lists uses compatible with McConnell Air Force Base (AFB) based on proximity to flight paths and noise contours. The area south of the AFB is in the future urban growth area for Wichita and Derby, and as those communities extend municipal infrastructure such as water and sewer service into the area, most of the undeveloped and agricultural properties will develop with urban density land uses. Presently, these properties are zoned to permit primarily residential uses, which the LUCG indicate are not compatible with operations of the AFB when developed at urban densities. The LUCG indicate that industrial uses such as those permitted by the IP-A, Industrial Park – Airport zoning district are the most compatible uses with operations of the AFB.

A written notice of the proposed rezoning was mailed to almost 500 property owners. Owners of property proposed to be rezoned were mailed notices as were owners of property located within 1000 feet of the properties proposed to be rezoned. These property owners were invited to an open house hosted by staff on September 11, 2007, in order to answer their questions regarding how the proposed rezoning could affect their specific property. The open house was attended by 24 property owners.

The primary objection to the proposed rezoning came from several property owners who purchased their property with intention of constructing a single family residence on a large lot in a rural area. Such a land use is consistent with the development pattern that has occurred in the area over last several decades, as properties have developed in a low-density residential pattern with rural water service and on-site sewer systems. From a long-term land use planning standpoint, a few additional single-family residences on large lots in this area will not have significant impact on the compatibility of overall land use in the area with AFB operations; however, the properties in the area are large enough that when municipal services are extended to the area the properties could develop at much greater densities, resulting in 10 or more houses being constructed on the same property where one house could now be constructed without municipal services. Another common objection came from owners of existing low-density residential properties who felt that future industrial land uses in their area would have negative impacts on their property. Other property owners indicated that they opposed the proposed rezoning because they preferred a different commercial zoning district that permitted more retail- and office-oriented uses.

The majority of the area proposed to be rezoned is within the Zoning Area of Influence for the City of Derby. On September 20, 2007, the Derby Planning Commission considered the proposed rezoning. The Derby Planning Commission voted to recommend that the proposed rezoning be denied for those properties owned by people who appeared at the hearing and indicated opposition to the proposal; therefore, approval of the rezoning of these properties will require a 5-0 vote of the County Commission. The Derby Planning Commission voted to recommend approval of the rezoning for the remainder of the properties. The attached map entitled "Proposed IP-A, Industrial Park – Airport Rezoning Derby Recommendation" illustrates the recommendation of the Derby Planning Commission.

In the opinion of planning staff, the recommendation of the Derby Planning Commission results in a non-contiguous zoning pattern with a jagged boundary that would not promote harmonious development in the area. Therefore, planning staff prepared the attached map entitled "Proposed IP-A, Industrial Park – Airport Rezoning Staff's Alternative Recommendation" that better promotes harmonious development in the area. This alternative would remove more properties from the proposed rezoning than recommended by the Derby Planning Commission. The additional properties are located southwest of 63rd Street South and K-15, between K-15 and Oliver north of 63rd Street South, and southwest of 47th Street South and Rock. The alternative is offered by planning staff should the MAPC make similar conclusions as the Derby Planning Commission that the removal of properties from the proposed rezoning is desirable. The findings presented below support both the original proposal and the alternative recommendation.

Another issue raised by the Derby Planning Commission was that some of the members felt that the uses permitted by the IP-A, Industrial Park – Airport zoning district are too restrictive. The two members who voted against the motion passed by the Derby Planning Commission indicated that they preferred to rezone all of the properties proposed for IP-A but also preferred to change the uses permitted by the IP-A district to include large lot residential and some retail and office uses. Such an approach would require an amendment of the Unified Zoning Code, which would require authorization from the governing bodies or MAPC and a separate public hearing. Such an approach does not promote the uses that are *most* compatible with AFB operations.

The District Advisory Board for City Council District III considered the proposed rezoning at their meeting on October 3, 2007. The properties proposed for rezoning that are located within the City of Wichita are located at the northeast corner of 55th Street South and Clifton. These properties were recently donated to the City of Wichita for the purpose of developing a park. The IP-A zoning district

permits parks and recreation but limits it to uses that attract no more than 25 participants or spectators per acre at any one time. As indicated in an attached memorandum, DAB III voted unanimously to recommend approval of the proposed rezoning.

Recommended Action: Based on information available prior to the public hearing, staff recommends that the proposed rezoning of properties to the IP-A, Industrial Park – Airport zoning district be **APPROVED**. This recommendation is based on the following findings:

1. The zoning, uses, and character of the neighborhood: North of the area proposed to be rezoned is McConnell Air Force Base and the major aircraft manufacturing facilities for Boeing, Spirit Aerosystems, and Cessna. Together, these land uses comprise the single largest concentration of employment and intense industrial uses in the entire region located on almost eight square miles of contiguous industrial zoning. The proposed rezoning of undeveloped and agricultural properties south of the AFB is a logical extension of this industrial zoning pattern and will encourage future land uses that are compatible with AFB operations and established industrial uses as the extension of municipal services allows future land development at urban densities.
2. The suitability of the subject property for the uses to which it has been restricted: The properties proposed to be rezoned primarily permit low-density residential uses of a suburban or rural character. Without the extension of municipal services, development of these properties with single-family residences on large lots would be compatible with AFB operations. However, this area is within the urban growth area for Derby and Wichita, and as municipal services are extended, the properties will be able to develop at urban residential densities, which is incompatible with AFB operations. Therefore, the more suitable use of the properties are the industrial uses permitted by the IP-A, Industrial Park – Airport zoning district, which is specifically tailored to permit uses compatible with AFB operations.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: There are several existing residential areas consisting primarily of single-family residences on large suburban and rural lots in proximity to the properties proposed to be rezoned to IP-A, Industrial Park – Airport. Future industrial development on the properties proposed to be rezoned has the potential to create some detrimental affects on these residential properties. However, the IP-A, Industrial Park – Airport zoning district has development and performance standards such as increased setback and screening requirements to will help mitigate detrimental affects. Additionally, the IP-A, Industrial Park – Airport zoning district has a relatively limited list of permitted uses and does not permit many of the more intense commercial uses such as retail shopping centers, convenience stores, and fast food restaurants that tend to have peak operating hours that are opposite residential uses and generate high levels of traffic, noise and trash.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon property owners: The proposed rezoning will further the health, safety, and welfare of the public by providing regulations that increase the compatibility of private land development with AFB operations. The proposed rezoning provides sufficient development opportunities to preserve private property values, does not create a hardship for property owners, and strikes a reasonable balance between the use of private property and the preservation of the public health, safety, and welfare.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed amendments are consistent with the recommendations of the *McConnell Air Force Base Joint Land Use Study, May 2005* (JLUS). The JLUS recommends revising current regulatory requirements to minimize potential safety conflicts, as recommended by the Federal Land Use Compatibility Guidelines. The proposed amendments further this objective. The proposed rezoning is also consistent with the Employment/Industry Center designation for this area as depicted on the 2030 Wichita Functional Land Use Guide of the *Wichita-Sedgwick County*

Comprehensive Plan. The Future Land Use map in the *Derby Comprehensive Plan* also depicts this area as appropriate for Employment/Industry use. The Future Land Use Map of the *Oaklawn/Sunview Neighborhood Revitalization Plan* identifies a portion of this area as appropriate for Commercial Services (Warehouse) use. The “Industrial Locational Guidelines” of *The Wichita-Sedgwick County Comprehensive Plan* indicate that industrial areas should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility trunk lines, rail spurs, airports, and as extensions of existing industrial uses. The proposed rezoning has good access to arterials, highways, and rail; is located in close proximity to an airport; and is an extension of existing industrial uses. The future provision of major utility trunk lines is a major reason the proposed rezoning is needed so that future urban density development is promoted in manner that is most compatible with AFB operations.

SCOTT KNEBEL, Planning staff presented the staff report. He reported that findings would support any of the three proposals – the original proposal, the Derby recommendation, or staff’s alternative recommendation.

Responding to a question from **MARNELL** concerning the sliver of lots along Oliver Street, **KNEBEL** explained that anything on the map that was not colored for IP-A was the current zoning and was not proposed to be changed.

DENNIS asked if the alternative staff proposal was consistent with the Federal Land use Compatibility Guidelines (LUCG), why wasn’t that the original proposal?

KNEBEL explained that the original proposal came from the Implementation Coordination Committee based on several meetings and a review of the areas contained within the noise contours of the 1994 “AICUZ” Study. He commented that most of the land in question is undeveloped and currently being used for agriculture. He said there was some concern about the properties immediately adjacent to the base being used for residential purposes, especially since they would be within the “flight path”.

HILLMAN asked if the Air Force had reviewed and approved staff’s latest recommendation?

LTC SMITH, DIRECTOR OF STAFF, MCCONNELL AIR FORCE BASE said they have seen the latest recommendation; that it meets federal guidelines; and they are in agreement with staff recommendation.

Responding to a question from **BISHOP** concerning the residential area south and west listed as single-family zoning, **KNEBEL** explained that it was the recommendation of the Derby Planning Commission that this area be removed since it is outside the airport overlay.

BISHOP asked about the residential area north of 55th street and if the area is rezoned to Industrial Park the residences will be non-conforming.

KNEBEL said the area she was referring to, which is owned by the City, is platted; however, no houses are built.

MCKAY referred to the staff report and commented that he felt uncomfortable with recycling plants and asphalt plants as permitted uses.

KNEBEL explained that this was not a hearing on the “IP-A” Industrial Park-Airport zoning district and what is and is not allowed under that zoning. He said if the Commission want to change the IP-A permitted uses, staff would need to advertise a separate public hearing and go through that process. He commented on the temporary nature of the asphalt plant, which would be a 3-6 month operation to build

publicly funded street projects in the area. He said the recycling would be indoor only; no outdoor recycling, and collection containers will be small like the containers in the parking lot of Dillon's Stores.

Responding to a question from **MARNELL** regarding several lots southwest of 55th and Woodlawn, **KNEBEL** commented that they had been included in the original proposal due to the potential future impact from noise as indicated by the 1994 "AICUZ" Study. He said the reason those were not removed was because staff felt they a contiguous zoning pattern. He said staff only removed any jagged edges and non-contiguous parcels.

MARY JO PEEL, 4615 EAST 63rd STREET SOUTH provided Commissioners a handout, which was a map depicting property that she had purchased 1 ½ year ago and had re-zoned to "LC" Limited Commercial. She indicated that the "LC" zoning was not reflected on the latest map provided by Planning Staff, and said she was concerned about how this proposal would affect their ability to develop their property. She asked the Commission to give them the Limited Commercial zoning that would allow them to move forward with their plans for development.

KNEBEL explained that the property was zoned "GC" General Commercial with a protective overlay approved by the County Commission. He said the area was subject to platting by the City of Derby, and the fact the plat had been recorded was not communicated to planning staff in order to put the rezoning on the map. He suggested removing the area from this rezoning proposal.

TRINA HODGES, 7217 SOUTH HILLSIDE, 55th AND WOODLAWN thanked Planning staff for the alternative proposal, which she said she and her husband supported. She asked the Commission to support the alternative zoning proposal submitted by staff.

CELIA AND GLENN GOERING, 6801 SOUTH OLIVER, DERBY stated that they supported staff's alternative recommendation. She voiced several concerns about the first proposal relative to increased population, property development, and preservation of the green space and wildlife and Wichita Osage Orange trees in the area. She urged the Commission to approve the alternative recommendation proposed by staff.

KIM MULLEN, 5201 TUSCANNY said she is in support of staff's alternative recommendation because she felt the other proposals would devalue their property.

PHIL MCDANIELS, 6613 EAST 47th STREET SOUTH said he has lived in the area for 27 years and he understood that this change in zoning is supposed to better serve McConnell Air Force Base. He added that if the area were developed into an industrial park, that would mean a higher density of buildings and people, which he felt would pose more of a threat than the current agricultural and undeveloped nature of the area. He said he was not in favor of any zoning change in his area.

BLAKE BEATY, 708 BLUE STEM, HAYESVILLE said he supported staff's alternative proposal, which removed his parent's property from the rezoning.

SHELLY DUNNEGIN, DERBY provided Commission members with a handout of pictures of her property. She said her family had spent time and energy to purchase land in the County on three separate occasions over a period of 13 years. She said they have 20-acre lots designed for large homes or they could have 5-acre lots if they platted. She said she did not like the idea of surrounding their homes with an industrial development. She commented that the original proposal made it so property owners couldn't even build homes on their own property, which she said was not right. She also said it was not right to rezone this area without property owner's permission because it was like changing the rules in the middle of the ballgame. She concluded by saying that demand for industrial development does not exist in this area. She also express concern regarding increased taxes. She concluded by saying that they do support staff's alternative recommendation and urged the Commission to approve the alternative proposal.

STEVE KELLY, 633 NORTH KESSLER said his property is zoned “LC” Limited Commercial now and that the property to the north and south of his property is not suitable for rural residential development. He said the best use of the land was for commercial or industrial. He said he does not support staff’s alternative recommendation, but supported Derby’s recommendation.

DALE KUHN, 6051 SOUTHEAST BLVD, DERBY asked the Commission to approve staff’s alternative recommendation.

BOB SCHRADER, 4415 EAST 63RD STREET SOUTH said he supported staff’s alternative recommendation and commented that the changes made to the map have been excellent. He mentioned that his neighbors, the Hill’s, who own the property next to him, should be granted their own zoning.

DEB HAMLIN, 641 SOUTH OLIVER thanked Planning Staff for the alternative proposal and the fact that their property was no longer in the rezoning. She said she doesn’t support the whole rezoning issue and asked why this needed to be done at all? She commented that she had heard a rumor that this was a “land grab” by McConnell Air Force Base.

TAPE 2, SIDE 2

BISHOP commented that she understood that there were two main reasons that have driven the rezoning process. She said one was that security around military installations was upgraded tremendously after 9/11. She said McConnell Air Force Base is extremely significant to the community so the *McConnell Air Force Base Joint Land Use Study* (JLUS) was developed to allow for flexibility and safety around the base. She said as different types of technology are developed, the use of the base may change in the future. She said another reason is that if there is less density surrounding the base, such as with Industrial Park - Airport zoning, any accident would cause less death and destruction.

MIKE MCKAY, CIVIL ENGINEERING, MCCONNELL AIR FORCE BASE said he wanted to reiterate what **MS. BISHOP** said and commented that the Air Force has been accused of grabbing land in past meetings; however, he wanted to remind the Commission and audience that the United States Department of Defense is the process of divesting itself of properties and has closed 130 Air Force bases. He concluded by stating that McConnell Air Force Base contributes approximately \$430 million annually into the local economy.

JOAN HEFFINGTON, 7145 BLUBERRY LANE, DERBY provided Commission members a handout which was an article concerning a memorial to her father who was a fighter pilot in Vietnam. She said she thought she was in favor of the zoning; however, she has a small office building that she would like excluded so that the area can remain “LI” Limited Industrial to fit in with her plans for development and the memorial to her father.

KNEBEL said either “LI” Limited Industrial or “LC” Limited Commercial zoning would permit what **MS. HEFFINGTON** wanted to do.

STEPHEN WOLKE, 6250 EAST 55th STREET, said he has lived in the area for 40 years and that four houses in his area are included in the rezoning. He asked why and said he didn’t understand it.

KNEBEL said these properties are included because they fall into the noise contours as designated by the 1994 “AICUZ” Study.

TIM AUSTIN, POE & ASSOCIATES, REPRESENTING L&A PROPERTY, said they are in favor of the proposed rezoning. He commented that his client may want to use the property for other uses than permitted in “IP-A” zoning.

DIRECTOR SCHLEGEL commented that the purpose of this public hearing was not to amend the zoning language.

LOU ANN DELGADO (HAUGHAWOUT), 11887 SW 40th TOWANDA said her family supported the staff's alternative recommendation and that they appreciate the change.

PHILLIP FOWLER, 6511 EAST MURDOCK, REPRESENTING PARENTS THAT LIVE AT 7035 EAST 49th STREET SOUTH said this rezoning is not affecting his parents this time around and that their area was left alone for now. He commented that if the area becomes an industrial park, how would that benefit security? He mentioned taxes and that his parents needed the lower tax on agricultural property in order to survive or they would no longer be able to afford to live where they are. He said he didn't approve of the rezoning at all.

KNEBEL explained that taxation and assessment is based on "use" not how a property is zoned. He said concerning the issue of why staff is proposing changing zoning now, he said the land will remain agricultural and open farm ground even after it is rezoned until the City of Wichita installs infrastructure such as sewer and water lines. He said this is a long-term community growth project and that when growth occurs, agricultural properties will be subdivided and developed. If the property remains as zoned, it will be developed into hundreds or even thousands of residential lots which is not a compatible use with the base. He said that was the purpose and intent of changing the zoning today. He said eventually future uses would be of an industrial nature.

PAMELA SCHRADER, 4415 EAST 63rd STREET SOUTH, said she was very happy with staff's alternative recommendation.

MOTION: To approve subject to staff recommendation.

DENNIS moved, **BISHOP** seconded the motion, and it carried (9-2).
GISICK and MCKAY – No.

GISICK said he wanted to congratulate staff on the alternative proposal, which seemed to make everyone very happy. He asked about the possibility of accommodating the one individual residing at 6250 E. 55th Street South.

KNEBEL mentioned the attempt to provide flexibility for future changes of mission at McConnell Air Force Base and said that was the reason that the area was included in the alternative proposal. He also mentioned the elimination of jagged edges and non-contiguous parcels to the area proposed for rezoning.

MARNELL stated that he disagreed with restricting these properties as well and suggested taking the quarter section in question containing the four parcels out of the proposal and commented that several areas south of the section had been removed.

Responding to a question, **LTC SMITH** said that McConnell Air Force Base is not directing any measure one way or the other and that they could agree to the alternative proposal either with or without the quarter section.

MARNELL asked if the base could accomplish their objective without the quarter section.

LTC SMITH reiterated that McConnell Air Force Base was not directing any of this local community rezoning effort. He said less density and less people around the base helps; however, he added that McConnell Air Force Base does not stand either for or against the quarter section parcel.

DIRECTOR SCHLEGEL said he wanted to state "for the record" that McConnell Air Force Base did not initiate this rezoning proposal. He said this proposal was a local community effort initiated by the

Wichita City Council, Board of County Commissioners, and the Derby City Council with the objective of protecting and retaining the base because they were concerned that the base not be closed.

KNEBEL mentioned that as far as the IP-A zoning is concerned, it is more permissive zoning that “SF-20”.

MARNELL commented that he thought some people would disagree and that is was more objectionable from his standpoint that local government bodies were wanting to restrict use of land as opposed to the Air Force; however, he said he would still like to see the quarter section removed.

SUBSTITUTE MOTION: To approve subject to staff recommendation, with the exception of the quarter section at the southwest corner of 55th and Woodlawn and the property at 6250 E. 55th Street S.

MARNELL moved, **MCKAY** seconded the motion, and it failed (4-7). **BISHOP, DENNIS, HENTZEN, MILLER STEVENS, MITCHELL, SHERMAN** and **VAN FLEET** – No.

BISHOP said she did not like to see an area removed from the rezoning because it was difficult for Planning Staff to develop this compromise. She said any more cut backs takes the zoning proposal further from its goal of retaining McConnell, and she felt it was important to retain McConnell from an economic development standpoint.

DENNIS said he wouldn’t support the substitute motion because he felt Planning Staff had come up with a good compromise. He mentioned the negative impact on the City of Wichita if McConnell Air Force Base closes.

HENTZEN also commented that he wouldn’t support the substitute motion.

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- 11. Case No.: DR2007-05**- Request Amendment to the April 19, 2001 Edition of the Wichita-Sedgwick County Unified Zoning Code to amend Section III-D.6.g. and Section VI.9. and creating Section I.L. and Section V.L. pertaining to the regulation of wireless communication facilities, including amendments to the administrative permit provisions and the establishment of a map of properties eligible for an administrative permit.

Background: On June 5, 2007, the City Council voted to initiate an amendment of the Unified Zoning Code pertaining to wireless communication facilities. The proposed amendments are shown in detail in the attached document entitled “Proposed Amendments to Wireless Communication Facility Regulations.” The proposed amendments address:

1. The eligibility of properties for administrative approval of towers. In order to be administratively approved, a tower would have to be located on a designated property. The properties proposed to be designated as eligible for administrative approval of towers are shown on the attached map entitled “Properties Eligible for an Administrative Permit for a Wireless Communication Facility.”
2. Adjustments to the height and setback criteria for administratively-approved towers are proposed. Taller towers could be approved administratively in NO, Neighborhood Office; GO, General Office; NR, Neighborhood Retail; and LC, Limited Commercial zoning districts. Administratively-approved towers would be required to comply with a setback requirement from low-density residential properties equal to one foot of setback per foot of tower height.

3. Presently, the Unified Zoning Code permits the construction of a new tower if it is less expensive than co-locating on an existing tower. The proposed amendments eliminate this “economic feasibility” test, meaning that a new tower need not be approved simply because it is less expensive than locating on an existing tower.
4. The proposed amendments include technical clarifications regarding the applicability of the regulations to all wireless communication facilities regardless of a property’s zoning.
5. The proposed amendments include updates to the aircraft warning light regulations to comply with changes in Federal regulations.
6. The proposed amendments include technical clarifications regarding the parties responsible for removal of unused towers.

The District Advisory Board for each of the six City Council Districts considered the proposed amendments during August and September. Each of the DABs voted to recommend approval of the proposed amendments. The DAB for District II recommended that the notification area for a Conditional Use for a wireless communication facility be increased from 200 feet to approximately 1,000 feet or 5-10 times the tower height. The attached document subtitled “District Advisory Boards Recommendations August 2007” summarizes the recommendations of the DABs.

Staff also invited representatives of the wireless communications industry to comment on the proposed amendments. Primarily, these representatives commented that they did not see a need to amend the regulations as they felt the current system was working fine, but given the City Council’s dissatisfaction with the current system, they are mostly satisfied with the proposed amendments. The wireless industry representatives indicated that they did not support the proposed amendment that would eliminate administrative authority to reduce or waive the compatibility setback for tower in conjunction with approving an administrative permit.

Recommended Action: Based on information available prior to the public hearing, staff recommends **approval** of the proposed amendments to the Wichita-Sedgwick County Unified Zoning Code pertaining to wireless communication facilities. This recommendation is based on the following findings.

1. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon property owners: The proposed amendments will further the health, safety, and welfare of the community by providing regulations that increase the compatibility of wireless communication facilities with surrounding properties and give those property owners more notice of potential facilities. While the proposed amendments provide regulations and development standards that are more restrictive than existing regulations, the proposed amendments provide sufficient development opportunities for wireless communication facilities as to not create an undue hardship for developers of facilities.
2. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed revisions to the zoning regulations are consistent with the recommendations of the *Wireless Communication Master Plan, August 2000*. The recommended “Properties Eligible for an Administrative Permit for a Wireless Communication Facility” meet the criteria established in the *Wireless Communication Master Plan* for properties where wireless communication facilities are encouraged to locate.

MILLER STEVENS stated for the record that she was abstaining from voting on this item because she voted at the DAB.

SCOTT KNEBEL, Planning staff presented the staff report.

KNEBEL referred Commissioners to the handout, which were the revisions to the proposed amendment suggested by the City Attorney. He briefly reviewed the revisions.

Responding to a question from **DENNIS** concerning Item g (2), (b) and how it was at odds with the next page, **KNEBEL** commented that the key phrase is "18 inches wide on any side". He said that type of tower is not typically used as a mounting bracket for a transmission antenna. Those types of towers have to be 6, 8, or 12 feet wide at the base. He said this particular clause makes provisions for antennas that need line of sight such as broadband wireless internet access. He also referred to the "definition section" of the plan.

TAPE 3, SIDE 1

Responding to a question from **HILLMAN** concerning topography and the significant ridge along Roosevelt and as well as other ridges within the community, **KNEBEL** commented that the guidelines of the Wireless Communication Plan dealt more with the impact of the tower on surrounding properties than identifying ideal locations for towers based on topography. He said topographically a property might be ideal; however, the area may not be suited for a tower because of surrounding land uses.

HILLMAN mentioned that you could see downtown from the church located at Mt. Vernon and Roosevelt. He also asked about the research and background done by staff to locate possible tower sites.

KNEBEL said the area of Mt. Vernon and Roosevelt is predominately residential and that was probably the reason it was not included in the map, which he said guided towards commercial properties. He said he was not going to tell the Commission that the map was perfect, but he said there were provisions in the code for map revision.

Responding to **BISHOP's** question concerning page 3, Item #7 the language ".....assess technically feasible..." and whether staff had the means to do that, **KNEBEL** commented that the language says "may" not "will" and that the provision is included in the code to so that applicants know that a delay in processing an application might occur in order to allow that review.

KNEBEL added that the one to one set back was a compatibility setback, not a safety setback.

GREG FERRIS, FERRIS CONSULTING, commented that he believes the current wireless plan works because of all the tower cases brought before the MAPC for review, all of the controversial ones were denied even though they met the guidelines set forth in the regulations. He mentioned that if some of the cases that were turned down went to court, the City of Wichita probably would have lost. He said since the plan has been in effect for approximately 7 ½ years, modification might be appropriate. He said he has been involved with the placement of between 150-200 towers in a ten state area with at least twenty different jurisdictions. He also mentioned that Planning Staff made every effort to communicate with the wireless community, and added that although he represents T-Mobile he was speaking for himself and no particular company at this hearing.

GISICK Out @ 4:45 p.m.

He said he has reviewed the changes and the map and agrees with the recommendations, with the exception that he was requesting that staff have the ability to waive the compatibility setback. He commented that a tower is always more visible in the middle of a property. He said as the regulation is written, staff can never waive the setback so each case will have to go through the process of coming before the MAPC for review, which he said adds 2-4 months to the process that is unnecessary. He said staff currently has the ability to waive setbacks and that saves time and effort. He added that staff does not waive the requirement if there is any opposition, and, therefore; requested that this provision not be changed.

KNEBEL explained that the amendment attempted to limit administrative authority on granting these facilities. He added that the City Council feels there needs to be greater public scrutiny of these facilities.

DIRECTOR SCHLEGEL added that the public wants to know what the rules are because it appeared that the two biggest wireless companies seemed to be getting administrative approval of cell towers without anyone knowing what was going on or what rules apply. He said the City Council is interested in developing a more transparent set of rules so that everyone knows what the rules are.

FERRIS commented on a particular case and said that the community was not at a loss because of a setback. He said if they moved the tower 60 feet closer to the street to comply with the setback, the community could suffer. He said he tries to process every possible case he can the administrative route, because it is faster and added that they still follow the rules.

JANET MILLER, REPRESENTING THE BOARD OF PARK COMMISSIONERS, 1102

JEFFERSON, said the Park Board voted 5-0 to oppose the proposed amendment because parkland was located within those areas designated for cell towers on the map. She said as the City Council's advisory body on parks, recreation and open space, the Park Board did not feel that a park was an appropriate location for a cell tower. She said there is no parkland designation in the zoning code. She stated that the proposal would allow approval and placement of cell towers within certain parks at the sole discretion of an administrative permit, with no review by the Board of Park Commissioners, the City Council-appointed body whose purpose it is to advise the Council on matters relating to Wichita Parks, and; therefore, the Park Board was not supportive of the amendments as written.

DENNIS asked staff if an amendment could be added that cell towers can't be built on parkland?

MILLER explained that of the over 4,700 acres of parkland in the city there were two types: some land is titled to the City and only about 1/3 of the total acreage is actually titled to the Board of Park Commissioners. She explained that the Park Board would have to be the property owner in order to be involved in the process because the applicant could apply to the City for an administrative permit and then an administrator could approve placement of the tower on parkland and it doesn't have to come to the Park Board for approval. Responding to a question from **DIRECTOR SCHLEGEL**, **MILLER** said the remainder of the parkland is under the control of the City Council.

DIRECTOR SCHLEGEL said approval of any agreement would have to go to the City Council and be on the agenda and that would happen before any administrative approval to ensure that the City Council was in agreement. He added that he and Director of the Office of Central Inspection, Kurt Schroeder signed off on administrative approvals.

MILLER commented that with any other permits for towers on parkland, the applicant has been the City.

DIRECTOR SCHLEGEL explained that the administrative permits for city-owned property are only allowed with the approval of the City Council. He said the Council would vote on whether to enter into an agreement to allow the cell tower to be built on their property, since they would function as the landlord or property owner.

FERRIS commented that **MILLER** was correct, that at one time there was no requirement that if someone wanted to construct a cell tower on parkland owned by city that it did not have to go to the Park Department or Park Board for comment. He mentioned the tower that was built on MacDonald Golf Course. He said now, they have to give a presentation to the Park Board so the board can forward their recommendation to the City Council.

MILLER commented that with the conditional use process, there is public notification, but there doesn't have to be any public notification process under an administrative permit.

DIRECTOR SCHELDEL commented that properties on the map meet the eligibility criteria for cell towers.

There was considerable discussion concerning process and procedure and whether parkland should be eliminated from the map.

BISHOP asked **MILLER** what she would you like to see the MAPC do? She asked if it was as simple as removing any parkland or something that could be accomplished as part of the amendment process?

MILLER said it makes sense to remove parkland from the designated areas.

KNEBEL explained that if the MAPC decided park properties were not eligible cell tower locations, they would have to recommend a different map; that the amendment could not be done by text.

MOTION: To approve subject to staff recommendation, but add that staff draw a different map removing parkland.

BISHOP moved, **DENNIS** seconded the motion.
(No vote taken, discussion continued.)

MARNELL said he agreed with the flexibility of allowing staff to administratively permit on compatibility setbacks.

DIRECTOR SCHLEGEL reported that a number of City Council members do not want staff to have that flexibility.

SUBSTITUTE MOTION: To approve subject to staff recommendation.

MARNELL moved, **MCKAY** seconded the motion, and it passed (6-2-1); however, 8 affirmative votes are required by code for a recommendation to be taken forward to the governing body as a recommendation of approval.

BISHOP and **DENNIS** – No. **MILLER STEVENS** abstained.

KNEBEL clarified that the Commission was referring to the revised document dated 10/18/07.

HILLMAN said he would support staff's suggestion with a continuing review process. He said this was a good start but that he saw some "big holes".

KNEBEL commented that a majority of the entire Planning Commission membership (8 votes) is needed to amend the Unified Zoning Code (UZO). He said he would take the recommendation forward as a denial due to a technicality.

The Metropolitan Area Planning Department informally adjourned at 5:25 p.m.

State of Kansas)
Sedgwick County)^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the

Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2007.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)